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**FACSIMILE TRANSMISSION COVER SHEET**

DATE: June 21, 2004

TO: Examiner Chih-Min Kam  
Group Art Unit: 1653  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RE: U.S. Patent Application No. 10/088,750  
For: A NOVEL HIGHER-ORDER STRUCTURE WITH PROMOTING  
TRANSLATION ACTIVITY  
Our Ref: 3190-015

FROM: Luke A. Kilyk, Esq. *LK*

FAC. TEL. NO.: 1-703-872-9306

NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 5

Items Attached: Response to Restriction Requirement -- 4 pages

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. 1-(703) 872-9306 on June 21, 2004.

Donald S. Prater  
Name (Print)

*Donald S. Prater*  
Signature

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Donald S. Prater

Name (Print)



Signature

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	Nakashima et al.	)	Examiner:	Chih-Min Kam
		)		
Application Number:	10/088,750	)	Group Art Unit:	1653
		)		
Filed:	March 20, 2002	)	Confirmation No.:	8810
		)		
Docket No.:	3190-015	)	Customer No.:	33432

For: A NOVEL HIGHER-ORDER STRUCTURE WITH PROMOTING TRANSLATION ACTIVITY

**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

June 21, 2004

Sir:

This Response to Restriction Requirement is in response to the Office Action dated May 19, 2004, for which the Examiner has set a one-month period for response, thus making the response due on or before June 21, 2004 (June 19 and June 20, 2004, were Saturday and Sunday, respectively).

U.S. Patent Application No. 10/088,750  
Response To Restriction Requirement dated June 21, 2004  
Office Action dated May 19, 2004

### REMARKS

Reconsideration and continued examination of this application are respectfully requested.

In the Office Action, the Examiner sets forth a restriction requirement wherein claims 1-19 are drawn to an RNA higher-order structure having a function for promoting a translation activity which comprises a base sequence containing SEQ ID NO: 1-6 or 7, or a related sequence; a recombinant vector containing a polynucleotide comprising at least one base sequence; a transformant that has been transformed with the recombinant vector; a method for synthesizing a heterologous protein utilizing a polynucleotide comprising at least one base sequence; a method for synthesizing a heterologous protein utilizing a recombinant vector containing a polynucleotide comprising at least one base sequence; a method for synthesizing a heterologous protein in a cell free protein synthesis system utilizing a recombinant vector containing a polynucleotide comprising at least one base sequence; a method for synthesizing a heterologous protein utilizing a transformant which is transformed with a recombinant vector containing a polynucleotide comprising at least one base sequence; or a method for initiating synthesis of arbitrary heterologous protein using a polynucleotide comprising a base sequence. The Examiner requires applicants to elect one nucleotide sequence from SEQ ID NO: 1-7.

To be responsive, the applicants elect, with traverse, SEQ ID NO: 1 for examination.

The applicants believe that the remaining SEQ ID NO: 2-7 should be examined at this time since there appears to be no serious burden on the part of the Examiner to search the entire scope of the claims. It is believed that in view of the Examiner's scope of search, SEQ ID NO: 2-7 listed in the Office Action have the same concept from the stand point that the searches would overlap.

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Furthermore, the Examiner has not provided any scope of search for each nucleotide sequence to justify the burden asserted by the Examiner.

In addition, it is respectfully pointed out that the search conducted by the PCT searching authority examined each of the nucleotide sequences thus showing that there is sufficient unity amongst the nucleotide sequences and since this is a § 371 application, the Examiner must apply the standards pursuant to the national stage entry from the PCT. In addition, the specification clearly sets forth the technical relationship amongst the nucleotide sequences. Since, the Examiner has not provided any concrete evidence to show that there would be any serious burden on the Examiner to search the entire scope of the claimed invention, and in view of the previous conduct of the PCT searching authority, it is clear that unity exists and that all sequences should be examined at this time.

As the Examiner knows, under M.P.E.P. § 803, if there is no serious burden in the examination of all of the claims even if the claims are directed to separate inventions, the Examiner must examine all claims at this time. It would appear that § 803 applies to the current situation and therefore the restriction requirement should be withdrawn and all claims should be examined at this time.

**CONCLUSION:**

If there are any other fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 50-0925. If a fee is required for an extension of time under 37

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Office Action dated May 19, 2004

C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to  
said Deposit Account.

Respectfully submitted,



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